

REPRESENTATIVE FOR PETITIONER:  
Richard A. Nussbaum, II, Attorney at Law

REPRESENTATIVE FOR RESPONDENT:  
Frank J. Agostino, Attorney at Law

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

South Bend Heritage Foundation, Inc.	)	Petition Nos.:	71-025-04-2-8-00001
	)		71-025-04-2-8-00002
Petitioner,	)		
	)	Parcel Nos.:	18-6135-4696
v.	)		18-6135-4694
	)		
St. Joseph County Property Tax	)	County:	St. Joseph
Assessment Board of Appeals,	)		
	)	Township:	Portage
Respondent.	)		
	)	Assessment Year:	2004

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Appeal from the Final Determination of the St. Joseph County Property Tax Assessment Board  
of Appeals

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**September 11, 2008**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (“Board”) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **INTRODUCTION**

1. In this highly fact-sensitive case, the St. Joseph County PTABOA conceded that South Bend Heritage Foundation, Inc. would qualify for a property tax exemption if it used its property to provide “low-income housing.” And the PTABOA did not dispute that Heritage provided such housing. On those narrow facts, the Board finds that Heritage’s property is exempt from taxation.

### **BACKGROUND AND PROCEDURAL HISTORY**

2. On May 14, 2004, Heritage applied to exempt two improved parcels from property taxation. On September 1, 2005, the St. Joseph County Property Tax Assessment Board of Appeals (“PTABOA”) found that Heritage’s parcels were 100% taxable. Less than one month later, on September 30, 2005, Heritage filed Form 132 petitions asking the Board to review Heritage’s exemption requests. The Board has jurisdiction over Heritage’s appeals under Ind. Code §§ 6-1.1-15 and 6-1.5-4-1.
3. On June 18, 2008, Patti Kindler, the Board’s designated Administrative Law Judge, held a hearing. She did not inspect Heritage’s property.
4. The following persons were sworn in at the hearing:

For Heritage:

Patrick Pinnick, Financial Manager, Heritage,  
Jeff Gibney, former Director of Heritage,  
Judy Kukla, Director of Human Resources, Heritage.

For St. Joseph County:

Ross Portolese, St. Joseph County PTABOA,  
Dennis Dillman, St. Joseph County PTABOA,  
Ralph Wolfe, St. Joseph County PTABOA,  
Rosemary Mandrici, Portage Township Assessor,  
David Wesolowski, St. Joseph County Assessor.

5. Heritage presented the following exhibits<sup>1</sup>:

- Petitioner Exhibit A – Heritage’s certificate of incorporation, articles of incorporation, and bylaws,<sup>2</sup> and letters from the Department of the Treasury and the IRS,
- Petitioner Exhibit B – PTABOA determination from October 10, 2000, St. Joseph County Commissioners’ January 7, 1998 Petition to Release Accrued Tax and Remove Property from Tax Rolls, January 30, 1998 order from the State Board of Tax Commissioners, and legal descriptions for both parcels,
- Petitioner Exhibit C – July 1, 2005 letter from Sue Tranberg, July 13, 2005 letter from Judy Kukla with attachments, July 26, 2005 letter from Sue Tranberg, August 9, 2005 letter from Judy Kukla with attachments,
- Petitioner Exhibit D – Forms 136, 120, and 132 for both parcels, and document entitled Specific Reasons Why PTABOA Is Incorrect,
- Petitioner Exhibit E – Agreement between Indiana Housing Finance Authority and Heritage with attachments, Declaration of Home Affordability Commitment with attachment, application for Shelters to Home Ownership Program with attachments, resolution by Heritage’s board of directors with accompanying Assistant Secretary’s Certificate, Home Investment Partnerships Program Assurances and Certifications with attachments 1A-D and 2-5, IHFA Housing Development Package with attachments,
- Petitioner Exhibit F – Auditor’s Certificate, excerpts and minutes from the St. Joseph County Council’s bond transcripts, bond resolution and certificate,
- Petitioner Exhibit G – “Pro forma” dated June, 9, 1997, rent rolls for 2004, rental income by unit, housing assistance payment vouchers, profit and loss statements for 2004 and 2005,
- Petitioner Exhibit H – Other Heritage projects, including Northside Terrace Apartments’ mission statement, and project information,
- Petitioner Exhibit I – *Neighborhood Housing Services of South Bend, Inc*, Pet. no. 89-712-5 (St. Bd. of Tax Comm’rs, May 9, 1995), *State Bd. of Tax Comm’rs v. Methodist Home for the Aged*, 241 N.E.2d 84 (Ind. Ct. App. 1968).

6. The St. Joseph County PTABOA presented the following exhibits:

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<sup>1</sup> Heritage offered large numbers of apparently loosely related documents under each exhibit number. Heritage described the exhibits with broad notations such as “Organizational Documents” and “Indiana Finance Housing Authority Application Documents for HOME Funds.” Unfortunately, Heritage’s method for marking exhibits has lead to an unnecessarily confusing record. The Board therefore has tried to describe those exhibits more specifically than Heritage did. In some cases, however, the Board simply refers to what appear to be attachments to larger documents, without listing separately those attachments.

<sup>2</sup> The organizational documents refer to Southold Heritage Foundation, Inc. That entity since changed its name to South Bend Heritage Foundation, Inc.

Respondent Exhibit 1 – Form 132 petitions,  
Respondent Exhibit 2 – Legal description,  
Respondent Exhibit 3 – Specific reasons the PTABOA is incorrect,  
Respondent Exhibit 4 – Form 120 notices,  
Respondent Exhibit 5 – Form 136 petitions.

7. The Board recognizes the following additional items as part of the record of proceedings:
  - Board Exhibit A – Form 132 petitions,
  - Board Exhibit B – Notices of hearing dated May 14, 2008,
  - Board Exhibit C – Hearing sign-in sheet,
  - Board Exhibit D – Exemption Hearing Order,
  - Board Exhibit E – Petitioner’s List of Witnesses and Exhibits,
  - Board Exhibit F – Notice of appearance by Frank J. Agostino,
  - Board Exhibit G – St. Joseph County Assessor’s notice of appearance as an additional party,
  - Board Exhibit H – Respondent’s List of Witness and Exhibits.
8. The parcels are located at 2007 Northside Blvd. and 1112 20<sup>th</sup> Street in South Bend, Indiana. Heritage operates the parcels as a single property known as the Northside Terrace Apartments. The property contains two five-story buildings with 44 total apartments.
9. For 2004, the St. Joseph County PTABOA denied Heritage’s request for an exemption and found that Heritage’s property was 100% taxable.
10. Heritage requests a 100% exemption.

#### **FINDINGS OF FACT**

11. Heritage is a private, not-for-profit service and community-development corporation committed to stabilizing, enhancing, and empowering inner-city neighborhoods. *Pet’r Ex. H at 2*. Heritage bought the property under appeal (1) to provide affordable housing on South Bend’s west side, and (2) to assure an equitable and just future for its tenants by creating an environment that promotes collaboration and embraces diversity. *Id.*

12. In 1998, the apartments were vacant and deteriorating rapidly. *Pet'r Ex. C at 2.* St. Joseph County deeded the property to Heritage for \$1. *Pet'r Ex. C at 5.* The county also issued bonds to assist Heritage in developing the property and renovating the existing buildings. Heritage voluntarily restricted itself to renting to tenants that earn no more than 80% of the area's median income. *Pet'r Ex. C at 12, 18.* Thus, a family of four earning more than \$34,000 would be ineligible to live at the property. *Pet'r Ex. C at 18.* Most of the property's tenants earn much less than Heritage's maximum income restrictions. *Pinnick testimony; see also Pet'r Ex. G at 5-6.*
13. Heritage also received funds from the HOME Investment Partnership Program administered by the Indiana Housing Finance Authority. *Pet'r Ex. C at 2-3.* In exchange for those funds, Heritage agreed to lease 8 of its 44 apartments at reduced rent to people "transitioning back to society" from programs offered through the Center for Homelessness and other local service agencies. *Pet'r Ex C at 2-10.*
14. The PTABOA denied Heritage's exemption application because Heritage said nothing about the income levels of the tenants in the 36 non-HOME-funded apartments. *Portolese testimony.*
15. At the Board's hearing, the PTABOA and Heritage made a joint opening statement, in which they agreed (1) that providing "low-income housing" was a charitable purpose under Ind. Code § 6-1.1-10-16 and (2) that the sole issue before the Board was whether Heritage actually provided low-income housing. *Agostino statement.* In its closing argument, the PTABOA again conceded that providing low-income housing was a charitable purpose. *Agostino statement.* The PTABOA did not expressly concede that Heritage provided low-income housing. But the PTABOA noted that, while it had denied the exemption because Heritage had not previously shown the actual income levels of its tenants, Heritage offered evidence at the Board's hearing showing that all but one tenant met Heritage's voluntary income restrictions. *Id.*

## CONCLUSIONS OF LAW AND ANALYSIS

16. Heritage claimed that its property should be exempt from taxation under Ind. Code § 6-1.1-10-16(a). Thus, Heritage needed to prove that its property was owned, occupied, and predominantly used for one of the exempt purposes listed in that statute. *See Indianapolis Osteopathic Hospital Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1114 (Ind. Tax Ct. 2004). While Ind. Code § 6-1.1-10-16(a) lists a number of exempt purposes, Heritage claimed only that it used its property for charitable purposes.
17. The PTABOA, however, largely relieved Heritage of its burden of proof by conceding (1) that providing “low-income housing” qualifies as a charitable purpose and (2) that the only issue to be resolved was whether Heritage actually provided such housing. Indeed, at the end of the hearing, the PTABOA did not even attempt to dispute that Heritage had met its burden. Although the PTABOA did not explain what it meant by “low-income housing,” Heritage’s operations appear to fall squarely within the boundaries of what the PTABOA conceded as charitable. Heritage voluntarily restricted itself to renting to tenants who earned 80% or less of the area’s median income, and it largely rented to tenants falling well below that threshold. Thus, based on the PTABOA’s concession and what the parties agreed was the limited scope of the Board’s hearing, the Board finds that Heritage is entitled to a 100% exemption for its property.
18. The Board emphasizes that its decision turns almost entirely on the PTABOA’s concession. The Board makes no finding that using a property to provide “low-income housing” necessarily qualifies that property for an exemption under Indiana Code § 6-1.1-10-16(a).

## SUMMARY OF FINAL DETERMINATION

19. Because the PTABOA both conceded that providing “low-income housing” was a charitable purpose that would qualify Heritage’s property for an exemption and failed to

dispute that Heritage actually provided such housing, the Board finds that Heritage's property is exempt from taxation for the March 1, 2004 assessment date.

The Indiana Board of Tax Review issues the Final Determination of the above captioned matter on the date written above.

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

### IMPORTANT NOTICE

#### - Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>